IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2007

CORAM

The Honourable MR.JUSTICE ELIPE DHARMARAO
and
The Honourable Mr.JUSTICE S.TAMILVANAN

WRIT PETITION NO.18439 OF 2007
and
M.P.NO.1 OF 2007

1. Union of India,
   Rep. by its Chairman
   Central Board of Excise & Customs,
   Ministry of Finance,
   Department of Revenue, New Delhi.

2. The Chief Commissioner of Customs,
   Customs House,
   Chennai 600 001.

3. The Commissioner of Customs,
   Customs House,
   Chennai 600 001. .. Petitioners

Vs.

1. The Registrar,
   Central Administrative Tribunal,
   Chennai Branch
   Chennai - 104.

2. K. Manappa .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order of the 1st respondent, the Central Administrative Tribunal, Chennai Bench in O.A.No.925 of 2005 dated 29.01.2007 and quash the same.

For Petitioners : Mr.M. Gopikrishnan, CGSC
For Respondent-1 is : Tribunal
For Respondent-2 : Mr.R. Kannan

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O R D E R

(Order of the Court was made by ELIPE DHARMARAO, J.)

Even though the matter was listed for considering the question of stay, on consent of both the counsel, the main writ petition itself is taken up for final disposal.

2. The present writ petition is directed against the order of the Tribunal dated 29.1.2007 in O.A.No.925 of 2005 wherein the applicant has challenged the order rejecting his representation dated 5.8.2003, in particular para 3 of such order.

3. The facts are in brief are as follows :-

The applicant was working as Examiner in Customs Department and on 11.9.1991 he was issued with charge memo stating that he gave a wrong report on the bills relating to consignment of old and used tyres resulting in loss of revenue to the Government from unauthorised importation. The applicant submitted his explanation dated 16.9.1991 and after conducing enquiry, the enquiry officer submitted his report on 26.11.1993 holding that there was no direct evidence to show that there was collusion between the applicant and importer and that there was no loss to the Government. After receipt of such report, the Commissioner of Customs, namely, the third respondent therein, imposed penalty of reduction of applicant's pay by two stages for a period of two years by order dated 24.1.1997, which was confirmed on appeal by the appellate authority. Against such orders, the applicant preferred O.A.No.37 of 1998 before the Tribunal. The Tribunal by its order dated 7.1.2000 set aside the impugned order on the ground that the Commissioner of Customs failed to issue notice to the applicant when the latter differed with the I.O's report. Against such order of the Tribunal, the respondents therein preferred W.P.No.12669 of 2000. A Division Bench of this Court by order dated 23.6.2003 modified the punishment and reduced the penalty to that of stoppage of one increment without cumulative effect and observed that the punishment should not be considered as bar for considering the question of promotion. On the basis of the order of the High Court, the the applicant made a representation dated 13.11.2003 to the Commissioner of Customs to promote him to the post of Appraiser with effect from 1991 and to the post of Assistant Commissioner from 2002. The second respondent therein, namely, the Chief Commissioner of Customs under the impugned order rejected the representation of the applicant. The appeal preferred against such order being failed, the applicant filed O.A.No.925 of 2005 challenging the order of the Chief Commissioner of Customs.

The applicant has reiterated the facts stated in the earlier

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Original Application. The respondents have filed a reply stating that the applicant became eligible for being considered to the post of Appraiser after putting in three years of service as Examiner. It was further stated that though he was to be considered for DPC held on 1992-93, he could not be promoted due to non-vigilance clearance. It was further stated that three charge sheets between September 1991 and July 1997 were laid against the applicant and since the award of punishment in the second case had started on 5.1.1998, the modification of punishment made by the High Court could not be implemented. It was further stated that the applicant was continuously under punishment from 24.1.1997 to 4.1.2000 and hence he was not considered for promotion during that period and he was eligible for promotion only from 5.1.2000. In the additional reply filed by the respondents therein they had stated that the DPC of 1992-1993 considered the case of the applicant for promotion and its recommendation was kept in a sealed cover.

4. After hearing the counsel for both sides and after going through the materials on record, the Tribunal quashed the impugned order and directed to promote the applicant notionally with retrospective effect based on the recommendations of the DPC held in 1992-93 and such a promotion can have prospective effect in respect of all his retiral benefits as well as pension payments in future and further directed the respondents therein to issue orders within a period of six weeks from the date of receipt of a copy of the order. The Tribunal further awarded a cost of Rs.1,000/-. Aggrieved against the aforesaid order of the Tribunal, the official respondents in the Original Application have come forward with this writ petition.

5. Learned counsel appearing for the petitioners has contended that the earlier order passed by a Division Bench of this Court in W.P.No.12669 of 2003 should be read along with the Departments Rules, which are not set aside, and the High Court has not specifically directed to give promotion to the applicant. He has further contended that since the applicant/first respondent voluntarily retired from service with effect from 1.8.2004, he would not be entitled to the benefits of the promotion to the grade of Assistant Commissioner since he has not performed the work of Asst. Commissioner.

6. Learned counsel appearing for the first respondent has submitted that when the High Court in its earlier order in W.P.No.12669 of 2000 has made it clear that the punishment should not be considered as a bar for considering the question of promotion of the present first respondent, the present petitioners ought not to have rejected the representation made by the first respondent 5.8.2003. He has further submitted that since the first respondent has approached the legal forum against the order passed by the Department, he has been victimized. He has reiterated the contentions

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raised before the Tribunal. He has further submitted that the Tribunal on consideration of the facts and circumstances has passed a reasoned order and it should not be interfered with.

7. This is an unfortunate case where a person has been deprived of his promotion because of the vindictive attitude of the petitioners. The first respondent was served with charge memo on 11.9.1991 to which the first respondent submitted his explanation on 16.9.1991. The Enquiry Officer submitted his report on 26.11.2003 holding that there was no direct evidence to show that there was collusion between the first respondent and the importer and there was no loss of revenue. Though such a report was submitted by the Enquiry Officer, the Commissioner of Customs imposed penalty of reduction of the first respondent's pay by two stages for a period of two years by order dated 24.1.1997 without issuing any notice to the first respondent. In the O.A.No.37 of 1998, preferred against such order, the Tribunal by its order dated 7.1.2000 quashed the order of punishment. Against such order of the Tribunal, the Department filed WP.No.12669 of 2000, wherein the Division Bench after hearing both sides held as follows :-

> "12. The incident had occurred in the year 1991. In view of such a long lapse of time, it would not be in the interest of justice to reopen the case for a further formal enquiry. On the other hand in view of the conclusion of the enquiry officer, the delinquent cannot be allowed to go scot free.
>
> 13. In course of hearing of the matter, we had suggested to the counsel appearing for the respondent No.2 that even though major penalty should not have been imposed, a minor penalty should be imposed so that the matter can be concluded obviating the necessity of a further enquiry which may result in further harassment or inconvenience. Learned Counsel for respondent No.2 did not have serious objection to such suggestion, but it was submitted by him that if some minor penalty is imposed it must be made clear that such minor penalty should not stand in the way of promotion.
>
> 14. In the peculiar facts and circumstances, interest of justice would be served by modifying the order of the Tribunal and directing that there shall be punishment of stoppage of one increment without cumulative effect and such punishment should not be considered as a bar for considering the question of promotion of the respondent No.2."

8. After reading of the aforesaid order, one would normally expect that the matter has come to an end. But, that is not the end of the matter, on the other hand, the petitioners have made the first

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respondent to start another round of litigation by passing the impugned order dated 6.1.2004, mis-interpreting the aforesaid order of the Division Bench. The relevant portion of the impugned order is as follows :-

> ". . . In view of the High Court order the penalty order has been modified and instead of reduction in pay by two stages for a period of two years with cumulative effect it has become one increment cut without cumulative effect. Accordingly, the Accounts section will rework the pay and allowances for the material period.
>
> The issue of promotion with retrospective effect has been examined and in view of the fact that the Hon'ble High Court has neither quashed the disciplinary proceedings nor given directions for promotion with retrospective effect the representation is rejected. Further the fact that the two more charge sheets were pending in the year 2000 has also to be taken into account."

9. One would have no quarrel with regard to first part of the impugned order. We are constrained to take a serious view of the matter so far as the second part of the order is concerned for the reasons stated under.

The Division Bench in the earlier Writ Petition, while considering the question whether notice had been issued to the present first respondent indicating that the disciplinary authority is likely to differ from the report of the enquiry officer, was prima facie satisfied that when a major punishment was being imposed, direct observance of the procedure as explained by the Supreme Court in 1998 SCC (L&S) 1783 (PUNJAB NATIONAL BANK AND OTHERS v. KUNJ BEHARI MISRA) should have been followed and in the case on hand since such procedure was not followed the Division Bench did not find any fault with the order of the Tribunal. Even though the Division Bench has come to the aforesaid conclusion it was suggested that a minor punishment shall be imposed so that the matter can be concluded obviating the necessity of a further enquiry which may result in further harassment or inconvenience. In such circumstances, to meet the ends of justice the Division Bench modified the punishment to stoppage of one increment without cumulative effect and observed in unambiguous words that such punishment should not be considered as a bar for considering the question of promotion of the first respondent.

10. When this was the factual scenario, the Commissioner of Customs passed the impugned order interpreting the order of the Division Bench stating that the Hon'ble High Court has neither quashed the disciplinary proceedings nor given directions for promotion with retrospective effect. This is nothing but mis-interpretation of the order of the High Court according to their

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whims and fancies. The facts of the case would show that the first respondent has been deprived of his promotion due to pending of charges which were levelled against him one after another. First Charge Memo was issued in the year 1991. When the enquiry officer submitted his report to the said charge on 26.11.1993 holding that the charges were not proved, the Department issued second charge memo dated 13.7.1994. Before passing the final order in such second charge memo, conveniently issued a third charge memo on 24.7.1997. Thereafter, passed the final order in the second charge memo on 5.1.1998 imposing major penalty reducing pay by two stages for a period of two years with cumulative effect i.e., from 5.1.1998 to 4.1.2000. So far as third charge memo is concerned, final order was passed on 30.4.1998 imposing punishment of reducing pay by one stage for a period of one year without cumulative effect and to run concurrently. Therefore, the Department has cunningly deprived the first respondent of his promotion from 1991, when the first charge memo was issued, till 4.1.2000, when the punishment imposed under third charge memo came to end i.e., for a period of 9 years. At last, the first respondent retired voluntarily from service on 1.8.2004.

11. Taking into consideration the peculiar facts of the present case and the orders passed by the Division Bench and the Tribunal in the earlier round of litigation, we are of the considered opinion that the first respondent has been deprived of his rightful promotion from 1991 and he become eligible and considered fit for promotion in the DPC convened in the year 1992-1993. The petitioners have erred in mis-interpreting both the orders of the Tribunal and High Court thereby denied the due promotion of the applicant. If the relief granted by the Tribunal would have been granted by the petitioners while considering the representation of the first respondent dated 5.8.2003, the question of once again approaching the Tribunal and obtaining an order to satisfy the query of the petitioners that the High Court has not directed them to give promotion with retrospective effect would not have arisen.

12. For the aforesaid reasons, we do not find any error in the order passed by the Tribunal and the writ petition is dismissed. The writ petitioners/respondents are directed to promote the applicant with retrospective effect based on the recommendation of the DPC held in respect of the year 1992-1993 notionally and such promotion shall have prospective effect in respect of all his retiral benefits as well as pension payments in future. The writ petitioners are further directed to issue necessary orders in this regard within a period of six weeks from the date of receipt of a copy of this order. Taking into consideration the fact that the first respondent has been deprived of his promotion for a period of about nine years and the fact of mis-interpreting the order passed by the Division Bench of this Court, we are inclined to impose costs of Rs.10,000/-

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(Rupees Ten thousand only). Consequently, M.P.No.1 of 2007 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Registrar
The Central Administrative Tribunal,
Chennai 104.

2. The Chairman
Central Board of Excise & Customs,
Ministry of Finance,
Department of Revenue, New Delhi.

3. The Chief Commissioner of Customs,
Customs House,
Chennai 600 001.

4. The Commissioner of Customs,
Customs House,
Chennai 600 001.

+1cc to Mr.M.Gopikrishnan, Advocate Sr 59289
+1cc to Mr.R.Kannan, Advocate Sr 59476

DM (CO)
km/9.10.

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